

IC 8-1-34

Chapter 34. Video Service Franchises

IC 8-1-34-1**"Affiliate"**

Sec. 1. As used in this chapter, "affiliate" has the meaning set forth in IC 23-1-43-1. The term includes a parent company or a subsidiary.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-2**"Certificate"**

Sec. 2. As used in this chapter, "certificate" refers to a certificate of franchise authority issued by the commission under section 17 of this chapter.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-3**"Commission"**

Sec. 3. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-4**"Franchise"**

Sec. 4. As used in this chapter, "franchise" means an initial authorization, or a renewal of an authorization, that:

- (1) is issued by the commission under this chapter after June 30, 2006; and
- (2) authorizes the construction or operation of a video service system in a designated service area in Indiana.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-5**"Gross revenue"**

Sec. 5. As used in this chapter, "gross revenue" means all consideration of any kind or nature, including cash, credits, property, and in kind contributions:

- (1) received by a holder from the operation of a video service system in a particular unit in Indiana; and
- (2) calculated by the holder under section 23 of this chapter.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-6**"Holder"**

Sec. 6. As used in this chapter, "holder" refers to a person that holds a certificate issued by the commission under this chapter after June 30, 2006.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-7**"Incumbent provider"**

Sec. 7. As used in this chapter, "incumbent provider" means the provider serving the largest number of video service subscribers in a particular local franchise service area on July 1, 2006.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-8**"Local franchise"**

Sec. 8. As used in this chapter, "local franchise" means an initial authorization, or a renewal of an authorization, that:

- (1) is issued by a unit before July 1, 2006; and
- (2) authorizes the construction or operation of a video service system in a designated service area in the unit.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-9**"Other programming service"**

Sec. 9. As used in this chapter, "other programming service" refers to information that a provider makes available to all subscribers generally.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-10**"Person"**

Sec. 10. As used in this chapter, "person" means an individual, a corporation, a partnership, a limited liability company, an association, or another entity organized under the laws of any state.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-11**"Provider"**

Sec. 11. As used in this chapter, "provider" refers to a multichannel video programming distributor (as defined in 47 U.S.C. 522(13)).

As added by P.L.27-2006, SEC.58.

IC 8-1-34-12**"Unit"**

Sec. 12. As used in this chapter, "unit" has the meaning set forth in IC 36-1-2-23.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-13**"Video programming"**

Sec. 13. As used in this chapter, "video programming" has the meaning set forth in 47 U.S.C. 522(20).

As added by P.L.27-2006, SEC.58.

IC 8-1-34-14

"Video service"

Sec. 14. (a) As used in this chapter, "video service" means:

(1) the transmission to subscribers of video programming and other programming service:

(A) through facilities located at least in part in a public right-of-way; and

(B) without regard to the technology used to deliver the video programming or other programming service; and

(2) any subscriber interaction required for the selection or use of the video programming or other programming service.

(b) The term does not include commercial mobile service (as defined in 47 U.S.C. 332).

As added by P.L.27-2006, SEC.58.

IC 8-1-34-15

"Video service system"

Sec. 15. (a) As used in this chapter, "video service system" means a system, consisting of a set of transmission paths and associated signal generation, reception, and control equipment, that is designed to provide video service directly to subscribers within a community. The term includes the:

(1) optical spectrum wavelengths;

(2) bandwidth; or

(3) other current or future technological capacity;

used to provide the video service.

(b) The term does not include a system that transmits video service to subscribers without using any public right-of-way.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-16 Version a

Commission as sole franchising authority; application; confidential information; filing fee

Note: This version of section effective until 3-24-2006. See also following version of this section, effective 3-24-2006.

Sec. 16. (a) Except as provided in section 21 of this chapter, after June 30, 2006:

(1) the commission is the sole franchising authority (as defined in 47 U.S.C. 522(10)) for the provision of video service in Indiana; and

(2) a unit may not:

(A) require a provider to obtain a separate franchise; or

(B) impose any fee, gross receipt tax, licensing requirement, rate regulation, or build-out requirement on a provider;

except as authorized by this chapter.

(b) Except as provided in section 21 of this chapter, a person who seeks to provide video service in Indiana after June 30, 2006, shall file with the commission an application for a franchise. The application shall be made on a form prescribed by the commission and must include the following:

(1) A sworn affidavit, signed by an officer or another person

authorized to bind the applicant, that affirms the following:

- (A) That the applicant has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before offering video service in Indiana.
- (B) That the applicant agrees to comply with all federal and state statutes, rules, and regulations applicable to the operation of the applicant's video service system.
- (C) That the applicant agrees to:
 - (i) comply with any local ordinance or regulation governing the use of public rights-of-way in the delivery of video service; and
 - (ii) recognize the police powers of a unit to enforce the ordinance or regulation.
- (D) If the applicant will terminate an existing local franchise under section 21 of this chapter, that the applicant agrees to perform any obligations owed to any private person under the terminated franchise until such time as the local franchise would otherwise terminate or expire, as required by section 22 of this chapter.
- (2) The applicant's legal name and any name under which the applicant does or will do business in Indiana, as authorized by the secretary of state.
- (3) The address and telephone number of the applicant's principal place of business, along with contact information for the person responsible for ongoing communications with the commission.
- (4) The names and titles of the applicant's principal officers.
- (5) The legal name, address, and telephone number of the applicant's parent company, if any.
- (6) A description of each service area in Indiana to be served by the applicant. A service area described under this subdivision may include an unincorporated area in Indiana.
- (7) The expected date for the deployment of video service in each of the areas identified in subdivision (6).
- (8) A list of other states in which the applicant provides video service.
- (9) If the applicant will terminate an existing local franchise under section 21(b) of this chapter, a copy of the written notice sent to the municipality under section 21(c) of this chapter.
- (10) Any other information the commission considers necessary to:
 - (A) monitor the provision of video service to Indiana customers; and
 - (B) prepare the commission's annual report to the regulatory flexibility committee under IC 8-1-2.6-4.

This subsection does not empower the commission to require an applicant to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information. The commission shall exercise all necessary caution to

avoid disclosure of confidential information supplied under this subsection.

(c) The commission may charge a fee for filing an application under this section. Any fee charged by the commission under this subsection may not exceed the commission's actual costs to process and review the application under section 17 of this chapter.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-16 Version b

Commission as sole franchising authority; application; confidential information; filing fee

Note: This version of section effective 3-24-2006. See also preceding version of this section, effective until 3-24-2006.

Sec. 16. (a) Except as provided in section 21 of this chapter, after June 30, 2006:

(1) the commission is the sole franchising authority (as defined in 47 U.S.C. 522(10)) for the provision of video service in Indiana; and

(2) a unit may not:

(A) require a provider to obtain a separate franchise; or

(B) impose any fee, gross receipt tax, licensing requirement, rate regulation, or build-out requirement on a provider;

except as authorized by this chapter.

(b) Except as provided in section 21 of this chapter, a person who seeks to provide video service in Indiana after June 30, 2006, shall file with the commission an application for a franchise. The application shall be made on a form prescribed by the commission and must include the following:

(1) A sworn affidavit, signed by an officer or another person authorized to bind the applicant, that affirms the following:

(A) That the applicant has filed or will timely file with the Federal Communications Commission all forms required by the Federal Communications Commission before offering video service in Indiana.

(B) That the applicant agrees to comply with all federal and state statutes, rules, and regulations applicable to the operation of the applicant's video service system.

(C) That the applicant agrees to:

(i) comply with any local ordinance or regulation governing the use of public rights-of-way in the delivery of video service; and

(ii) recognize the police powers of a unit to enforce the ordinance or regulation.

(D) If the applicant will terminate an existing local franchise under section 21 of this chapter, that the applicant agrees to perform any obligations owed to any private person, as required by section 22 of this chapter.

(2) The applicant's legal name and any name under which the applicant does or will do business in Indiana, as authorized by the secretary of state.

- (3) The address and telephone number of the applicant's principal place of business, along with contact information for the person responsible for ongoing communications with the commission.
- (4) The names and titles of the applicant's principal officers.
- (5) The legal name, address, and telephone number of the applicant's parent company, if any.
- (6) A description of each service area in Indiana to be served by the applicant. A service area described under this subdivision may include an unincorporated area in Indiana.
- (7) The expected date for the deployment of video service in each of the areas identified in subdivision (6).
- (8) A list of other states in which the applicant provides video service.
- (9) If the applicant will terminate an existing local franchise under section 21(b) of this chapter, a copy of the written notice sent to the municipality under section 21(c) of this chapter.
- (10) Any other information the commission considers necessary to:
 - (A) monitor the provision of video service to Indiana customers; and
 - (B) prepare the commission's annual report to the regulatory flexibility committee under IC 8-1-2.6-4.

This subsection does not empower the commission to require an applicant to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information. The commission shall exercise all necessary caution to avoid disclosure of confidential information supplied under this subsection.

(c) The commission may charge a fee for filing an application under this section. Any fee charged by the commission under this subsection may not exceed the commission's actual costs to process and review the application under section 17 of this chapter.

As added by P.L.27-2006, SEC.58. Amended by P.L.183-2006, SEC.1.

IC 8-1-34-17

Issuance of certificate; build-out requirements prohibited; settlement agreements approved before July 29, 2004; use of rights-of-way

Sec. 17. (a) Not later than fifteen (15) business days after the commission receives an application under section 16 of this chapter, the commission shall determine whether the application is complete and properly verified. If the commission determines that the application is incomplete or is not properly verified, the commission shall notify the applicant of the deficiency and allow the applicant to resubmit the application after correcting the deficiency. If the commission determines that the application is complete and properly verified, the commission shall issue the applicant a certificate of franchise authority. A certificate issued under this section must

contain:

- (1) a grant of authority to provide the video service requested in the application;
- (2) a grant of authority to use and occupy public rights-of-way in the delivery of the video service, subject to:
 - (A) state and local laws and regulations governing the use and occupancy of public rights-of-way; and
 - (B) the police powers of local units to enforce local ordinances and regulations governing the use and occupancy of public rights-of-way; and
- (3) a statement that the authority granted under subdivisions (1) and (2) is subject to the holder's lawful provision and operation of the video service.

(b) Except as provided in subsection (c) and section 28 of this chapter, the commission may not require a provider to:

- (1) satisfy any build-out requirements;
- (2) deploy, or make investments in, any infrastructure, facilities, or equipment; or
- (3) pay an application fee, a document fee, a state franchise fee, a service charge, or any fee other than the franchise fee paid to a local unit under section 24 of this chapter;

as a condition of receiving or holding a certificate under this chapter.

(c) This section does not limit the commission's right to enforce any obligation described in subsection (b) that a provider is subject to under the terms of a settlement agreement approved by the commission before July 29, 2004.

(d) The general assembly, a state agency, or a unit may not adopt a law, rule, ordinance, or regulation governing the use and occupancy of public rights-of-way that:

- (1) discriminates against any provider, or is unduly burdensome with respect to any provider, based on the particular facilities or technology used by the provider to deliver video service; or
- (2) allows a video service system owned or operated by a unit to use or occupy public rights-of-way on terms or conditions more favorable or less burdensome than those that apply to other providers.

A law, a rule, an ordinance, or a regulation that violates this subsection is void.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-18

Transfer of certificate

Sec. 18. Subject to the notice requirements under section 20 of this chapter, a certificate issued under this chapter may be transferred to any successor in interest of the holder to which the certificate is originally granted.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-19

Termination of certificate by holder

Sec. 19. A certificate issued under this chapter may be terminated by the holder by submitting notice to the commission under section 20 of this chapter.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-20

Notice of change; notice of intent to provide service; customer notification requirements

Sec. 20. (a) In connection with, or as a condition of receiving, a certificate under this chapter, the commission shall require a holder to notify the commission, after the issuance of a certificate, of any of the following changes involving the holder or the certificate issued:

(1) Any transaction involving a change in the ownership, operation, control, or corporate organization of the holder, including a merger, an acquisition, or a reorganization.

(2) A change in the holder's legal name or the adoption of, or change to, an assumed business name. The holder shall submit to the commission a certified copy of the:

(A) amended certificate of authority; or

(B) certificate of assumed business name;

issued by the secretary of state to reflect the change.

(3) A change in the holder's principal business address or in the name of the person authorized to receive notice on behalf of the holder.

(4) Any transfer of the certificate to a successor in interest of the holder allowed by section 18 of this chapter. The holder shall identify the successor in interest to which the transfer is made.

(5) The termination of any certificate issued under this chapter, as allowed by section 19 of this chapter. The holder shall identify:

(A) any other certificate issued under this chapter that will be retained by the holder;

(B) the number of Indiana customers in the service area covered by the certificate being terminated; and

(C) the method by which the holder's customers were notified of the termination, if required by the commission under subsection (c).

(6) A change in the video programming or other programming service provided in one (1) or more of the services areas identified under section 16(b)(6) of this chapter in the holder's most recent application for a certificate under this chapter.

(7) A change in one (1) or more of the service areas identified under section 16(b)(6) of this chapter that would increase or decrease the territory within the service area. The holder shall describe the new boundaries of the affected service areas after the proposed change is made.

The commission shall prescribe the time in which a holder must report changes under this section. The commission may prescribe a form for the reporting of changes under this section.

(b) In connection with, or as a condition of, receiving a certificate under this chapter, the commission shall require a holder to notify a unit:

(1) in which the holder does not already provide video service under:

(A) a local franchise issued by the unit before July 1, 2006; or

(B) another certificate issued under this chapter after June 30, 2006; and

(2) that is included in the holder's service area under the certificate being issued;

that the holder intends to provide video service in the unit's jurisdiction. The holder shall give the notice required under this subdivision not later than ten (10) days before the holder begins providing video service in the unit's jurisdiction.

(c) In connection with the issuance of a certificate under this chapter, the commission may require a holder to provide advance notice to the holder's Indiana customers if the holder will do any of the following:

(1) Change the rates and charges for video service that the holder offers in any of its service areas in Indiana.

(2) Cease to offer video service, or any specific video programming or other programming service, that the holder offers in any of the holder's service areas in Indiana.

The commission shall prescribe any customer notification requirements under this subsection in a rule of general application adopted under IC 4-22-2.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-21

Election to operate under local franchise; termination of local franchise; notice; outstanding and prepaid franchise fees

Sec. 21. (a) For purposes of this section, a provider is considered to be a holder of a local franchise on June 30, 2006, if:

(1) the provider; or

(2) any affiliate or successor entity of the provider;

holds a local franchise to provide video service in a unit on June 30, 2006.

(b) After June 30, 2006, a provider that is the holder of a local franchise on June 30, 2006, regardless of whether the provider is the incumbent provider in the local franchise service area, may elect to:

(1) continue providing video service under the local franchise until the local franchise expires; or

(2) subject to section 22 of this chapter, terminate the local franchise and apply to the commission for a certificate under this chapter.

(c) A provider that elects to terminate a local franchise under subsection (b) must provide written notice of the provider's election to:

(1) the commission; and

(2) the affected unit;
not later than November 1, 2006. The local franchise is terminated on the date the commission issues a certificate to the provider under this chapter.

(d) Not later than ninety (90) days after a local franchise is terminated under subsection (c), the provider that terminated the local franchise shall remit to the affected unit any accrued but unpaid franchise fees due under the local franchise. If the provider has credit remaining from any prepaid franchise fees, the provider may deduct the amount of the credit from any future fees or taxes owed to the affected unit.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-22 Version a

Terminated local franchise; rights, duties, and obligations owed to private persons; obligations based on gross income; right of action; "private person" defined

Note: This version of section effective until 3-24-2006. See also following version of this section, effective 3-24-2006.

Sec. 22. (a) A provider that elects to terminate a local franchise under section 21 of this chapter remains subject to the contractual rights, duties, and obligations incurred by the provider under the terms and conditions of the terminated local franchise that are owed to any private person, including a subscriber.

(b) The obligations that a provider owes to a private person under subsection (a) include any obligations based on the gross income received by the provider:

- (1) after the provider becomes a holder of a certificate under this chapter; and
- (2) for video service provided in the service area covered by the terminated local franchise;

if, under the terms of the terminated local franchise, the obligations would have been based on the gross income received by the provider for video service provided in the service area covered by the terminated local franchise.

(c) All liens, security interests, royalties, and other contracts, rights, and interests arising out of the terminated local franchise and owed to a private person, shall:

- (1) continue in full force and effect without the need for renewal, extension, or continuance;
- (2) be paid or performed by the provider after becoming a holder of a certificate under this chapter; and
- (3) apply as though the gross revenue of the provider continued to be generated under the terminated local franchise with respect to any revenue generated in the service area covered by the terminated local franchise.

(d) The commission shall condition the issuance or renewal of a certificate under this chapter on a provider's payment and performance of the rights, duties, and obligations described in this section until the time the terminated local franchise would ordinarily

terminate or expire if the provider had not made the election under section 21 of this chapter. In applying for an initial certificate or a renewal certificate under this chapter, a provider shall agree to pay or perform the obligations described in this section, as required by section 16(b)(1)(D) of this chapter.

(e) A private person that claims to be:

(1) owed any rights, duties, or obligations by a holder under this section; and

(2) aggrieved by a holder's alleged violation of this section;

may bring an action in a court with jurisdiction to enforce the rights, duties, or obligations claimed to be owed to the person.

(f) As used in this section, "private person" does not include:

(1) the unit that issued the terminated local franchise;

(2) a political subdivision (as defined in IC 36-1-2-13) not described in subdivision (1); or

(3) any official, agent, or employee of:

(A) the unit that issued the terminated local franchise; or

(B) a political subdivision described in subdivision (2);

in the individual's official capacity.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-22 Version b

Terminated local franchise; rights, duties, and obligations owed to private persons; right of action; "private person"

Note: This version of section effective 3-24-2006. See also preceding version of this section, effective until 3-24-2006.

Sec. 22. (a) A provider that elects to terminate a local franchise under section 21 of this chapter remains subject to the contractual rights, duties, and obligations incurred by the provider that are owed to any private person.

(b) All liens, security interests, royalties, and other contracts, rights, and interests owed to a private person, shall:

(1) continue in full force and effect without the need for renewal, extension, or continuance; and

(2) be paid or performed by the provider after becoming a holder of a certificate under this chapter.

(c) The commission shall condition the issuance or renewal of a certificate under this chapter on a provider's payment and performance of the rights, duties, and obligations described in this section. In applying for an initial certificate or a renewal certificate under this chapter, a provider shall agree to pay or perform the obligations described in this section, as required by section 16(b)(1)(D) of this chapter.

(d) A private person that claims to be:

(1) owed any rights, duties, or obligations by a holder under this section; and

(2) aggrieved by a holder's alleged violation of this section;

may bring an action in a court with jurisdiction to enforce the rights, duties, or obligations claimed to be owed to the person.

(e) As used in this section, "private person" does not include:

- (1) the unit that issued the terminated local franchise;
- (2) a political subdivision (as defined in IC 36-1-2-13) not described in subdivision (1); or
- (3) any official, agent, or employee of:
 - (A) the unit that issued the terminated local franchise; or
 - (B) a political subdivision described in subdivision (2);in the individual's official capacity.

As added by P.L.27-2006, SEC.58. Amended by P.L.183-2006, SEC.2.

IC 8-1-34-23

Gross revenue; determination under existing local franchise; determination when no local franchise exists; unincorporated areas; annexed territory

Sec. 23. (a) Except as provided in subsection (b), the holder of a certificate under this chapter shall, at the end of each calendar quarter, determine under subsections (c) and (d) the gross revenue received during that quarter from the holder's provision of video service in each unit included in the holder's service area under the certificate.

(b) This subsection applies to a holder or other provider providing video service in a unit in which a provider of video service is required on June 30, 2006, to pay a franchise fee based on a percentage of gross revenues. The holder's or provider's gross revenue shall be determined as follows:

(1) If only one (1) local franchise is in effect on June 30, 2006, the holder or provider shall determine gross revenue as the term is defined in the local franchise in effect on June 30, 2006.

(2) If:

(A) more than one (1) local franchise is in effect on June 30, 2006; and

(B) the holder or provider is subject to a local franchise in the unit on June 30, 2006;

the holder or provider shall determine gross revenue as the term is defined in the local franchise to which the holder or provider is subject on June 30, 2006.

(3) If:

(A) more than one (1) local franchise is in effect on June 30, 2006; and

(B) the holder is not subject to a local franchise in the unit on June 30, 2006;

the holder shall determine gross revenue as the term is defined in the local franchise in effect on June 30, 2006, that is most favorable to the unit.

(c) This subsection does not apply to a holder that is required to determine gross revenue under subsection (b). The holder shall include the following in determining the gross revenue received during the quarter with respect to a particular unit:

(1) Fees and charges charged to subscribers for video service provided by the holder. Fees and charges under this subdivision

include the following:

- (A) Recurring monthly charges for video service.
- (B) Event based charges for video service, including pay per view and video on demand charges.
- (C) Charges for the rental of set top boxes and other equipment.
- (D) Service charges related to the provision of video service, including activation, installation, repair, and maintenance charges.
- (E) Administrative charges related to the provision of video service, including service order and service termination charges.

(2) Revenue received by an affiliate of the holder from the affiliate's provision of video service, to the extent that treating the revenue as revenue of the affiliate, instead of revenue of the holder, would have the effect of evading the payment of fees that would otherwise be paid to the unit. However, revenue of an affiliate may not be considered revenue of the holder if the revenue is otherwise subject to fees to be paid to the unit.

(d) This subsection does not apply to a holder that is required to determine gross revenue under subsection (b). The holder shall not include the following in determining the gross revenue received during the quarter with respect to a particular unit:

- (1) Revenue not actually received, regardless of whether it is billed. Revenue described in this subdivision includes bad debt.
- (2) Revenue received by an affiliate or any other person in exchange for supplying goods and services used by the holder to provide video service under the holder's certificate.
- (3) Refunds, rebates, or discounts made to subscribers, advertisers, the unit, or other providers leasing access to the holder's facilities.

(4) Revenue from providing service other than video service, including revenue from providing:

- (A) telecommunications service (as defined in 47 U.S.C. 153(46));
- (B) information service (as defined in 47 U.S.C. 153(20)), other than video service; or
- (C) any other service not classified as cable service or video programming by the Federal Communications Commission.

(5) Any fee imposed on the holder under this chapter that is passed through to and paid by subscribers, including the franchise fee:

- (A) imposed under section 24 of this chapter for the quarter immediately preceding the quarter for which gross revenue is being computed; and
- (B) passed through to and paid by subscribers during the quarter for which gross revenue is being computed.

(6) Revenue from the sale of video service for resale in which the purchaser collects a franchise fee under:

- (A) this chapter; or

(B) a local franchise agreement in effect on July 1, 2006; from the purchaser's customers. This subdivision does not limit the authority of a unit, or the commission on behalf of a unit, to impose a tax, fee, or other assessment upon the purchaser under 42 U.S.C. 542(h).

(7) Any tax of general applicability:

(A) imposed on the holder or on subscribers by a federal, state, or local governmental entity; and

(B) required to be collected by the holder and remitted to the taxing entity;

including the state gross retail and use taxes (IC 6-2.5) and the utility receipts tax (IC 6-2.3).

(8) Any forgone revenue from providing free or reduced cost cable video service to any person, including:

(A) employees of the holder;

(B) the unit; or

(C) public institutions, public schools, or other governmental entities, as required or permitted by this chapter or by federal law.

However, any revenue that the holder chooses to forgo in exchange for goods or services through a trade or barter arrangement shall be included in gross revenue.

(9) Revenue from the sale of:

(A) capital assets; or

(B) surplus equipment that is not used by the purchaser to receive video service from the holder.

(10) Reimbursements that:

(A) are made by programmers to the holder for marketing costs incurred by the holder for the introduction of new programming; and

(B) exceed the actual costs incurred by the holder.

(11) Late payment fees collected from customers.

(12) Charges, other than those described in subsection (b)(1), that are aggregated or bundled with charges described in subsection (b)(1) on a customer's bill, if the holder can reasonably identify the charges on the books and records by the holder in the regular course of business.

(e) If, under the terms of the holder's certificate, the holder provides video service to any unincorporated area in Indiana, the holder shall calculate the holder's gross income received from each unincorporated area served in accordance with:

(1) subsection (b); or

(2) subsections (c) and (d);

whichever is applicable.

(f) If a unit served by the holder under a certificate annexes any territory after the certificate is issued or renewed under this chapter, the holder shall:

(1) include in the calculation of gross revenue for the annexing unit any revenue generated by the holder from providing video service to the annexed territory; and

(2) subtract from the calculation of gross revenue for any unit or unincorporated area:

- (A) of which the annexed territory was formerly a part; and
- (B) served by the holder before the effective date of the annexation;

the amount of gross revenue determined under subdivision (1); beginning with the calculation of gross revenue for the calendar quarter in which the annexation becomes effective. The holder shall notify the commission of the new boundaries of the affected service areas as required under section 20(a)(7) of this chapter.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-24

Franchise fee; percentage of gross revenue; unincorporated areas; disputes over gross revenue calculation; pass through to subscribers; billing itemization; fee under local franchise

Sec. 24. (a) Subject to subsection (e), not later than forty-five (45) days after the end of each calendar quarter, the holder shall pay to each unit included in the holder's service area under a certificate issued under this chapter a franchise fee equal to:

(1) the amount of gross revenue received from providing video service in the unit during the most recent calendar quarter, as determined under section 23 of this chapter; multiplied by

(2) a percentage equal to one (1) of the following:

(A) If a local franchise has never been in effect in the unit before July 1, 2006, five percent (5%).

(B) If no local franchise is in effect in the unit on July 1, 2006, but one (1) or more local franchises have been in effect in the unit before July 1, 2006, the percentage of gross revenue paid by the holder of the most recent local franchise in effect in the unit, unless the unit elects to impose a different percentage, which may not exceed five percent (5%).

(C) If there is one (1) local franchise in effect in the unit on July 1, 2006, the percentage of gross revenue paid by the holder of that local franchise as a franchise fee to the unit, unless the unit elects to impose a different percentage, which may not exceed five percent (5%). Upon the expiration of a local franchise described in this clause, the percentage shall be determined by the unit but may not exceed five percent (5%).

(D) If there is more than one (1) local franchise in effect with respect to the unit on July 1, 2006, a percentage determined by the unit, which may not exceed the greater of:

- (i) five percent (5%); or
- (ii) the percentage paid by a holder of any local franchise in effect in the unit on July 1, 2006.

(b) If the holder provides video service to an unincorporated area in Indiana, as described in section 23(e) of this chapter, the holder shall:

- (1) calculate the franchise fee with respect to the unincorporated area in accordance with subsection (a); and
- (2) remit the franchise fee to the county in which the unincorporated area is located.

If an unincorporated area served by the provider is located in one (1) or more contiguous counties, the provider shall remit part of the franchise fee calculated under subdivision (1) to each county having territory in the unincorporated area served. The part of the franchise fee remitted to a county must bear the same proportion to the total franchise fee for the area, as calculated under subdivision (1), that the number of subscribers in the county bears to the total number of subscribers in the unincorporated area served.

(c) With each payment of a franchise fee to a unit under this section, the holder shall include a statement explaining the basis for the calculation of the franchise fee. A unit may review the books and records of:

- (1) the holder; or
- (2) an affiliate of the holder, if appropriate;

to the extent necessary to ensure the holder's compliance with section 23 of this chapter in calculating the gross revenue upon which the remitted franchise fee is based. Each party shall bear the party's own costs of an examination under this subsection. If the holder and the unit cannot agree on the amount of gross revenue on which the franchise fee should be based, either party may petition the commission to determine the amount of gross revenue on which the franchise fee should be based. A determination of the commission under this subsection is final, subject to the right of direct appeal by either party.

(d) A franchise fee owed by a holder to a unit under this section may be passed through to, and collected from, the holder's subscribers in the unit. To the extent allowed under 43 U.S.C. 542(c), the holder may identify as a separate line item on each regular bill issued to a subscriber:

- (1) the amount of the total bill assessed as a franchise fee under this section; and
- (2) the identity of the unit to which the franchise fee is paid.

(e) A holder that elects under section 21(b)(1) of this chapter to continue providing video service under a local franchise is not required to pay the franchise fee prescribed under this section, but shall pay any franchise fee imposed under the terms of the local franchise.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-25

PEG channel capacity, facilities, and financial support; unit with existing requirements

Sec. 25. (a) This section applies in a unit that:

- (1) is included in the service area of a holder of a certificate issued under this chapter; and
- (2) requires a provider described in section 21(a) of this chapter

to provide PEG channel capacity, facilities, or financial support under a local franchise issued to the provider by the unit before July 1, 2006, regardless of whether the provider elects to:

(A) continue the local franchise under section 21(b)(1) of this chapter; or

(B) terminate the local franchise under section 21(b)(2) of this chapter and continue providing video service in the unit under a certificate issued under this chapter.

(b) As used in this section, "PEG channel" refers to a channel made available by a provider on the provider's video service system for public, educational, and governmental programming.

(c) The holder of a certificate under this chapter shall provide in the unit at least the number of PEG channels that the provider described in section 21(a) of this chapter is required to provide in the unit under the terms of the local franchise described in subsection (a)(2).

(d) If the local franchise described in subsection (a)(2) requires the provider described in section 21(a) of this chapter to provide financial support for public, educational, or governmental programming in the unit, the holder of a certificate under this chapter shall pay the unit the same cash payments on a per subscriber basis that the provider described in section 21(a) of this chapter is required to pay the unit under the terms of the local franchise. The holder shall remit payments under this subsection to the unit on a quarterly basis, along with the franchise fee paid to the unit under section 24 of this chapter. For each calendar quarter, the holder shall remit to the unit an amount equal to:

(1) the cash payment for the quarter due from the provider described in section 21(a) of this chapter; multiplied by

(2) a fraction, the numerator of which equals the number of subscribers served by the holder in the unit, and the denominator of which equals the total number of subscribers served by all providers in the unit.

(e) Any payments remitted to a unit under subsection (d):

(1) are made:

(A) for the purposes set forth in 47 U.S.C. 531; and

(B) under the unit's authority under 47 U.S.C. 541(a)(4)(B); and

(2) may not be credited against the franchise fee payable to the unit under section 24 of this chapter.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-26

PEG channel capacity, facilities, and financial support; units or areas without existing requirements; authority of commission to require

Sec. 26. (a) This section applies in a unit or an unincorporated area of Indiana that:

(1) is included in the service area of a holder of a certificate issued under this chapter; and

(2) does not require a provider described in section 21(a) of this chapter to provide PEG channel capacity, facilities, or financial support under a local franchise issued before July 1, 2006.

(b) As used in this section, "PEG channel" has the meaning set forth in section 25(b) of this chapter.

(c) As a condition of issuing or renewing a certificate to a holder under this chapter, and upon:

(1) the petition of a unit or an unincorporated area included in the holder's service area under the certificate; or

(2) the commission's own motion;

the commission may require the holder to provide PEG channel capacity, facilities, or financial support to one (1) or more units or unincorporated areas in the holder's service area under the certificate.

(d) As allowed by 47 U.S.C. 531, the commission may do the following in exercising its authority under this section:

(1) Adopt rules and procedures for the designation or use of PEG channel capacity in each unit or unincorporated area in which the requirements apply.

(2) Enforce any requirement concerning the provision or use of PEG channel capacity. The commission's enforcement authority under this subdivision includes the authority to enforce any provision that:

(A) is proposed by the holder and incorporated in the holder's certificate; and

(B) concerns services, facilities, or equipment related to PEG channel capacity;

regardless of whether the provision is required in rules or procedures adopted by the commission under subdivision (1).

(3) If PEG channel capacity is designated under the certificate, prescribe rules and procedures:

(A) under which the holder is permitted to use the designated channel capacity to provide other services, if the channel capacity is not being used in the unit or unincorporated area for the designated purposes; and

(B) that set forth the conditions under which the holder must cease any use permitted under clause (A).

As added by P.L.27-2006, SEC.58.

IC 8-1-34-26.5

Additional PEG channel capacity

Sec. 26.5. (a) This section applies in a unit:

(1) that is included in the service area of a holder of a certificate issued under this chapter; and

(2) in which a provider is required to provide PEG channel capacity:

(A) under a local franchise issued to the provider by the unit before July 1, 2006; or

(B) by the commission under section 26 of this chapter.

(b) As used in this section, "PEG channel" has the meaning set forth in section 25(b) of this chapter.

(c) As a condition of issuing or renewing a certificate to a holder under this chapter, and upon:

- (1) the petition of the unit; or
- (2) the commission's own motion;

the commission may require the holder to provide the unit with PEG channel capacity that is in addition to the channel capacity required to be provided in the unit under the existing local franchise or under an order of the commission under section 26 of this chapter.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-27

Operation of PEG channel; compatibility with provider's system; interconnection of systems; enforcement authority of courts

Sec. 27. (a) The operation of a PEG channel provided under section 25, 26, or 26.5 of this chapter is the responsibility of the unit or unincorporated area that receives the benefit of the channel, and the holder or other provider is responsible only for the transmission of the channel.

(b) A unit or an unincorporated area that receives the benefit of a PEG channel provided under section 25, 26, or 26.5 of this chapter shall ensure that all transmissions, content, and programming that are transmitted over a channel or other facility of the provider are submitted to the provider in a manner or form that:

- (1) is capable of being accepted and transmitted by the provider over the provider's video service system;
- (2) does not require additional alteration or change in the content by the provider; and
- (3) is compatible with the technology or protocol used by the provider to deliver video service.

(c) If it is technically feasible to do so, the holder of a certificate under this section and a provider described in section 21(a) of this chapter may cooperate to interconnect their systems to provide PEG channel capacity required under section 25, 26, or 26.5 of this chapter. Interconnection under this section may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. The parties shall negotiate the terms of the interconnection in good faith, and a provider described in section 21(a) of this chapter may not withhold interconnection of PEG channel capacity.

(d) A court with jurisdiction has exclusive authority to enforce any requirement under:

- (1) this section; or
- (2) section 25, 26, or 26.5 of this chapter.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-28

Discrimination based on income prohibited; use of alternative technology; petition for equitable relief; order by commission; right to appeal

Sec. 28. (a) This section applies to the following:

- (1) A provider that holds a certificate issued by the commission under this chapter.
 - (2) A provider that provides video service under a local franchise, as permitted under section 21(b)(1) of this chapter.
- (b) Subject to section 17(b) of this chapter, a provider may not deny access to video service to any group of potential residential subscribers based on the income level of the residents in the local area in which the group resides. However, a provider:
- (1) shall have a reasonable time to become capable of providing video service to all households within a service area included in the provider's franchise; and
 - (2) may satisfy the requirements of this subsection through the use of an alternative technology that:
 - (A) offers content, service, and functionality comparable to that provided through the provider's video service system, as determined by the commission; and
 - (B) may include a technology that does not require the use of any public right-of-way.
- (c) For purposes of this subsection, an "affected person" includes the following:
- (1) A potential subscriber of video service from a provider.
 - (2) A local unit in which a person described in subdivision (1) resides, acting on behalf of the person or other similarly situated persons.

An affected person that alleges a violation of subsection (b) by a provider may petition the commission for equitable relief. Not later than forty-five (45) days after receiving a petition under this subsection, the commission shall, after notice and an opportunity for hearing, make a determination as to whether a violation of subsection (b) has occurred.

(d) If, after holding any hearing requested in the matter, the commission determines that no violation of subsection (b) has occurred, the commission's decision is final, subject to the petitioner's right to appeal the decision in a court having jurisdiction. If the commission determines that a violation of subsection (b) has occurred, the commission may issue an order requiring the provider to offer video service to those persons to whom access to the provider's video service has been denied. An order of the commission under this subsection must specify the following:

- (1) A date by which the provider must offer video service to those persons to whom access has been denied as a result of the provider's violation. In specifying a date under this subdivision, the commission shall allow the provider a reasonable time to become capable of providing the required video service to the affected households.
- (2) Any alternative technology described in subsection (b)(2) that the commission approves for use by the provider in making video service available to the affected households.

Except as provided in subsection (e), an order of the commission under this subsection is final.

(e) A provider may appeal:

- (1) a determination by the commission under subsection (d) that a violation of subsection (b) has occurred; or
- (2) any findings or requirements of the order issued in connection with the commission's finding of a violation;

in a court having jurisdiction.

As added by P.L.27-2006, SEC.58.

IC 8-1-34-29

Institutional network capacity; video service to public buildings; provision under terms of local franchise; continuation of services after December 31, 2008, or expiration of franchise; apportionment of costs

Sec. 29. (a) This section applies to a provider that holds a local franchise to provide video service in a unit at any time before July 1, 2009, regardless of whether:

(1) the provider elects:

- (A) under section 21(b)(1) of this chapter, to continue providing video service under the local franchise; or
- (B) under section 21(b)(2) of this chapter, to terminate the local franchise and provide video service in the unit under a certificate issued under this chapter;

if the local franchise is in effect on June 30, 2009; or

(2) the provider will provide video service in the unit under a certificate issued under this chapter, if the local franchise expires before July 1, 2009.

(b) As used in this section, "local franchise" refers to:

- (1) the existing local franchise, if subsection (a)(1)(A) applies;
- (2) the terminated local franchise, if subsection (a)(1)(B) applies; or
- (3) the most recent local franchise held by the provider in the unit, if subsection (a)(2) applies.

(c) A holder to which this section applies shall continue to provide the following services under the terms of the local franchise until January 1, 2009, or until the local franchise will expire or would have expired, whichever is later:

(1) Institutional network capacity, however defined or referenced in the local franchise, but generally including private line data network capacity for use by the unit for noncommercial purposes. Institutional network capacity provided under this subdivision shall continue to be provided at the same capacity as required under the terms of the local franchise.

(2) Video service to community public buildings, such as municipal buildings and public schools, however defined or referenced in the local franchise, but generally including cable drop connections to the buildings and a particular tier of video service provided to the buildings. Video service provided under this subdivision shall continue to be provided to the same extent as required under the terms of the local franchise.

Beginning January 1, 2009, or upon the date on which the local franchise will expire or would have expired, whichever is later, a provider that provides services under this subsection shall continue to provide the services under this subsection if the unit requests that the services continue after December 31, 2008, or after the date the local franchise will expire or would have expired, whichever is later.

(d) This subsection applies to services described in subsection (c) that are provided after December 31, 2008, or after the date the local franchise will expire or would have expired, whichever is later. The incremental costs of the services shall be apportioned among all holders of a franchise to provide video service within the unit. The amount of the incremental costs borne by a particular holder is equal to the total cost of providing the services multiplied by a fraction calculated as follows:

- (1) The numerator of the fraction equals the number of subscribers to whom the holder provides video service in the unit.
- (2) The denominator of the fraction equals the total number of subscribers to whom all holders provide video service in the unit.

As added by P.L.27-2006, SEC.58.